

General Information Letter: In general, Illinois treatment of deferred compensation follows federal income tax treatment, except that qualified retirement plan payments are not subject to Illinois income tax.

August 20, 2001

Dear:

This is in response to your e-mail dated August 2, 2001 in which you request a Letter Ruling pertaining to your Income Tax Treatment of Retirement, Deferred Compensation and Other Special Compensation Types Survey. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

Upon review of the information supplied in your letter it appears that Illinois follows the Federal guidelines for *contributions* to the indicated plans. However, for certain deferred compensation plans and IRA's, Illinois differs in that it does not tax *distributions* from them. Determination of net income for Illinois income tax purposes begins with federal adjusted gross income ("AGI"). Accordingly, any sum properly excluded or deducted from income for federal purposes prior to the determination of AGI is effectively excluded from income for Illinois purposes. Section 203 of the Illinois Income Tax Act ("IITA") adds back certain amounts of income to federal AGI (copy enclosed) but the modifications do not encompass the items on your list. Hence, Illinois follows federal practice for these items.

1. 401(k) Plans – a qualified cash or deferred compensation arrangement which is part of a profit sharing or stock bonus plan or any qualified plan.

Answer 1: Sums contributed to a section 401(k) before-tax salary deferrals are not part of federal adjusted gross income in the year of deferral and are not added back in determining Illinois base income subject to Illinois income taxation.

2. 403(b) Plans – Tax Sheltered Annuity is an annuity contract that is purchased under a qualified plan covering certain employees or education institutions and tax exempt organizations.

Answer 2: All amounts included within the provisions of IRC 403(b) are subtracted from base income by section 203(a)(2)(F) of the IITA.

3. 408(k) Plans – Simplified Employee Pensions which can include a salary reduction arrangement where an employee elects to make pre-tax contributions.

Answer 3: All amounts included within the provisions of IRC 408 are subtracted from base income by section 203(a)(2)(F) of the IITA.

4. 414(h) Plans – Employer Pick Up Plans, Government plans that are “picked up” by the employer are treated by employer contributions. A contribution is picked up if it is made in the employee’s name but the employee is never actually charged for it. Trust or annuity plan.

Answer 4: If these sums are excluded from Federal AGI then no section of the IITA would add them back to base income for Illinois taxing purposes.

5. 457 Plans – A deferred compensation plan for employees of state and local governments and tax exempt organizations.

Answer 5: All amounts included within the provisions of IRC 457 are subtracted from base income by section 203(a)(2)(F) of the IITA except for exempt organizations under IRC 457.

6. 501(c)(18) Plans – a trust which is part of a pension plan that is funded by employee contributions only. The plan should have been established prior to July of 1959.

Answer 6: To the extent that these are not included in Federal AGI they are excluded from base income under the IITA.

7. SIMPLE Plans - employee contributions into a SIMPLE deferred compensation plan. For small employers, up to \$6000.00 per year can be contributed.

Answer 7: Pursuant to Section 203(a)(2)(F), there is a subtraction modification from federal AGI in determining an individual’s base income for such amounts.

8. SEPS – Simplified employee pensions are IRA’s to which employers can make contributions beyond the usual IRA limits. See 408(k) for employee contributions to SEP’s. THIS ITEM RELATES TO EMPLOYER CONTRIBUTIONS.

Answer 8: Illinois defaults to the Federal guidelines on this matter.

9. EMPLOYER MATCH OR COMPUTATIONS to any of the above indicated plans.

Answer 9: Illinois defaults to the Federal guidelines on this matter.

Special Compensation Items

10. Awards, gifts, prizes for performance, productivity etc.

Answer 10: Illinois defaults to the Federal guidelines on this matter.

QUESTIONS 11- 28.

Answer to Questions 11 - 28: See answer to question 10.

29. Individual retirement accounts – Employee contributions.

Answer 29: To the extent these sums are excluded from federal AGI, Illinois has no provision to add back such sums.

30. Individual retirement accounts – Employer contributions.

Answer 30: To the extent these sums are excluded from federal AGI, Illinois has no provision to add back such sums.

31. Employer paid Long Term Disability premiums.

Answer 31: Illinois defaults to the Federal guidelines on this matter.

QUESTIONS 32 – 33

Answer to Questions 32-33: See answer to question 31.

34. Fringe Benefits.

Answer 34: Illinois defaults to the federal guidelines on this matter.

QUESTIONS 35 – 48.

Answer to Questions 35 – 48: See question 34.

49. Qualified transportation expenses. Currently, on the federal level up to \$180.00 per month of parking expenses and up to \$65.00 per month of qualified transportation expenses such as transit passes are excluded from taxation. In addition, legislation was passed that now allows these benefits to be treated as a salary reduction. They are not permitted as part of a Section 125 Cafeteria Plan or as a flexible spending arrangement.

Answer 49: If these sums are excluded from federal AGI, they will be excluded from Illinois income taxes.

50. Golden Parachute Payments

Answer 50: Illinois defaults to the Federal guidelines on this matter.

51. Non-qualified deferred compensation plans – funded.

Answer 51: To the extent these sums are included in federal AGI, they will also be included in Illinois base income.

52. Non-qualified deferred compensation plans – unfunded.

Answer 52: To the extent these sums are included in federal AGI, they will also be included in Illinois base income.

53. Domestic Partner Benefits – there are some jurisdictions that recognize Partner Benefits and extend the same taxability rules to the value of these benefits. As an example, an employee has medical coverage on themselves and a domestic partner. The value of the coverage for the domestic partner is considered taxable for Federal purposes, however in some jurisdictions the employer and employee contributions for the partner's benefits would be exempt from taxation. Please indicate if these types of benefits are taxable in your jurisdiction.

Answer 53: To the extent these sums are included in federal AGI, they will also be included in Illinois base income.

As mentioned above, this is merely a general information letter and not a statement of policy and is not binding upon the Department. I hope that this has been helpful to you. The Department maintains a website, which can be accessed at www.revenue.state.il.us. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

Matthew S. Crain
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